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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19 SOUTHERN DIVISION

20 APPLIED MEDICAL RESOURCES
CORPORATION, a California
21 corporation,

22 Plaintiff,

23 v.

24 MEDTRONIC, INC., a Minnesota
25 corporation,

26 Defendant.
27
28

} Case No.
8:23-cv-00268-WLH-DFM

} **APPLIED'S APPLICATION
FOR LEAVE TO FILE UNDER
SEAL DOCUMENTS
RELATING TO ITS
OPPOSITION TO MOTION TO
EXCLUDE OR STRIKE
CERTAIN OPINIONS AND
TESTIMONY OF APPLIED'S
EXPERT JONATHAN ORSZAG**

} Hon. Wesley L. Hsu

Pursuant to Local Rule 79-5.2.2(b), Plaintiff APPLIED MEDICAL RESOURCES CORPORATION (“Applied”) hereby seeks leave to file under seal the following documents:

Document	Description	Reason for Sealing
Exhibit A to the Declaration of Cheryl T. Burgess in Support of Applied’s Opposition to Medtronic’s Motion to Exclude or Strike Certain Opinions and Testimony of Applied’s Expert Jonathan Orszag (the “Burgess Declaration”)	Kevin Murphy deposition transcript excerpts designated Highly Confidential – Outside Attorneys’ Eyes Only	Contains confidential sales strategy and confidential competitive intelligence, confidential customer information, confidential sales contract information, and confidential pricing information. Transcript designated Highly Confidential by Medtronic.
Exhibit B to the Burgess Declaration	Jonathan Orszag deposition transcript excerpts designated Highly Confidential – Outside Attorneys’ Eyes Only	Contains confidential pricing information and confidential competitive intelligence. Transcript designated Highly Confidential by Applied.
Exhibit C to the Burgess Declaration	Charles Favilla deposition transcript excerpts designated Highly Confidential – Outside Attorneys’ Eyes Only	Contains confidential sales contract information and confidential sales strategy. Transcript designated Highly Confidential by Medtronic.
Exhibit E to the Burgess Declaration	Barry Kaup deposition transcript excerpts designated Highly Confidential – Outside Attorneys’ Eyes Only	Contains confidential marketing and sales strategy and confidential competitive intelligence. Transcript designated Highly Confidential by Medtronic.

Exhibit F to the Burgess Declaration	John Hendershot deposition transcript excerpts designated Highly Confidential – Outside Attorneys’ Eyes Only	Contains confidential sales strategy. Transcript designated Highly Confidential by Medtronic.
Memorandum In Support of Applied’s Opposition to Motion to Exclude or Strike Certain Opinions And Testimony Of Applied’s Expert Jonathan Orszag	Memorandum of law quoting and/or paraphrasing the above-referenced exhibits and exhibits identified in Medtronic’s Application For Leave To File Under Seal Documents Relating To Its Opposition To Motion To Exclude Or Strike Certain Opinions And Testimony Of Applied’s Expert Jonathan Orszag (Dkt 135)	Contains analysis based on Highly Confidential documents and information.

The public’s “access to judicial records is not absolute.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). There is a strong presumption in favor of access to court records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096–97 (9th Cir. 2016). “A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the ‘compelling reasons’ standard.” *Kamakana*, 447 F.3d at 1178. “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial court.’” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon v. Warner Commc’n, Inc.*, 435 U.S. 589, 599 (1978)). “One factor that weighs in favor of sealing documents is when the release of the documents will cause competitive harm to a business.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1221

1 (Fed. Cir. 2013). Information should be sealed where “competitors could not
2 obtain [the information] anywhere else.” *Id.* at 1229 (reversing district court’s
3 refusal to seal material after finding compelling reasons to seal the material).

4 Each of the above-referenced documents contains highly confidential and
5 competitively sensitive business information about the parties, such as strategic
6 information, competitive intelligence, financial and pricing information, and
7 customer information. Specifically:

8 • **Exhibit A** is excerpts of the deposition of Medtronic’s expert
9 witness, Kevin Murphy. These excerpts include discussion of confidential sales
10 strategy and confidential competitive intelligence, confidential customer
11 information, confidential sales contract information, and confidential pricing
12 information.

13 • **Exhibit B** is excerpts of the deposition of Applied’s liability and
14 damages expert, Jonathan Orszag. These excerpts include discussion of
15 confidential pricing information and confidential competitive intelligence.

16 • **Exhibit C** is excerpts of the deposition of a Medtronic witness,
17 Charles Favilla. These excerpts include discussion of confidential sales contract
18 information and confidential sales strategy.

19 • **Exhibit E** is excerpts of the deposition of a Medtronic witness, Barry
20 Kaup. These excerpts include discussion of confidential marketing and sales
21 strategy and confidential competitive intelligence.

22 • **Exhibit F** is excerpts of the deposition of a Medtronic witness, John
23 Hendershot. These excerpts include discussion of confidential sales strategy.

24 • **Memorandum** In Support of Applied’s Opposition to Motion to
25 Exclude Or Strike Certain Opinions And Testimony Of Applied’s Expert
26 Jonathan Orszag. Portions of Applied’s memorandum of law quote from or
27 paraphrase the contents of the above-referenced exhibits and exhibits identified
28 in Medtronic’s Application For Leave To File Under Seal Documents Relating

1 To Its Opposition To Motion To Exclude Or Strike Certain Opinions And
2 Testimony Of Applied's Expert Jonathan Orszag (Dkt 135), and thus contain
3 highly confidential and competitively sensitive business information about the
4 parties.

5 There are compelling reasons to seal the above-referenced documents.
6 Each of the above-referenced documents contains information that Applied or
7 Medtronic has designated "HIGHLY CONFIDENTIAL – OUTSIDE
8 ATTORNEYS' EYES ONLY" ("Highly Confidential") under the parties'
9 Stipulated Protective Order (Dkt. 54). Declaration Of Cheryl T. Burgess
10 ("Burgess Decl.") in Support of Applied's Application For Leave To File Under
11 Seal Documents Relating To Its Opposition To Motion To Exclude Or Strike
12 Certain Opinions And Testimony Of Applied's Expert Jonathan Orszag, ¶ 2.
13 Each of the above-listed documents is designated Highly Confidential because
14 the producing party deems that disclosure to another party or non-party is likely
15 to cause harm or significant competitive disadvantage to the producing party. *Id.*
16 at ¶ 3. For example, competitors could gain an unfair advantage if they learn a
17 party's confidential marketing, sales, and pricing strategies and are thereby
18 permitted to tailor their own strategies in response. Failure to seal the Highly
19 Confidential information would thus allow others to unfairly compete in the
20 market and usurp the parties' business opportunities, to the detriment of the
21 parties. This risk of competitive harm weighs in favor of sealing. *Apple Inc. v.*
22 *Samsung Elecs. Co.*, 727 F.3d 1214, 1221 (Fed. Cir. 2013). Medtronic has
23 informed Applied through the meet-and-confer process that it agrees that the
24 above-referenced materials are properly filed under seal. Burgess Decl. at ¶ 5.

25 The Court's standing order instructs that "[d]ocuments that are not
26 confidential or privileged in their entirety should not be filed under seal if the
27 confidential portions can be redacted and filed separately with a reasonable
28 amount of effort." (Dkt. 37 at 8.) Consistent with the standing order, Applied

1 filed a public, redacted version of its Memorandum in Support of Applied's
2 Opposition to Motion to Exclude or Strike Certain Opinions And Testimony Of
3 Applied's Expert Jonathan Orszag. Applied seeks to seal the unredacted version.
4 Applied also seeks to seal the above-listed Exhibits A, B, C, E, and F in their
5 entirety because the confidential information is integrally intertwined and
6 therefore redactions cannot be applied with a reasonable amount of effort.

7 Accordingly, Applied respectfully requests an order sealing the above-
8 listed documents, which contain material Medtronic or Applied has designated
9 Highly Confidential under the Stipulated Protective Order.

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11 Respectfully submitted,

12 KNOBBE, MARTENS, OLSON & BEAR, LLP
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14 Dated: January 10, 2025

By: /s/ Cheryl Burgess

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